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## ARIZONA ATTORNEY GENERAL

DARRELL F. SMITH, THE ATTORNEY GENERAL  
STATE CAPITOL  
PHOENIX, ARIZONA

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DEPARTMENT OF LAW OPINION NO. 67-14 (R-73)

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REQUESTED BY: O. M. LASSEN  
State Land Commissioner

QUESTION: Under the opinion of the United States Supreme Court in the case of Lassen v. State, 87 Sup. Ct. 584, may the State Land Department convey land to governmental agencies of the State or political subdivisions and municipal corporations thereof other than State and County Highway Departments without going to public auction sale?

ANSWER: Yes.

Enabling Act restrictions requiring sale of trust lands by public auction were imposed as a protection for the trust and its beneficiaries. In Lassen v. State, 87 Sup. Ct. 584, 17 L.Ed.2d 515, the Supreme Court held that the restrictions were inapplicable to the Arizona Highway Department's land acquisition program, since under the rules established by the State Land Department requiring full payment of the appraised value of the land, the beneficiaries would be protected and the purposes of the trust would be entirely satisfied.

We think the decision of the Supreme Court clearly recognizes the protection afforded the trust in sales of trust lands to all governmental agencies of the State or political subdivisions and municipal corporations thereof, without the necessity of public auction sale, where there has been a true appraisal and payment of full compensation to the trust. The court stated:

" . . . The restrictions were thus intended to guarantee, by preventing particular abuses through the prohibition of specific practices, that the trust received appropriate compensation for trust lands. We see no need to read the Act

to impose these restrictions on transfers in which the abuses they were intended to prevent are not likely to occur, and in which the trust may in another and more effective fashion be assured full compensation.

". . .The trust will be protected, and its purposes entirely satisfied, if the State is required to provide full compensation for the land it uses. . . The State may instead employ the procedures established by the Commissioner's rules, or any other procedures reasonably calculated to assure the integrity of the trust and to prevent misapplication of its lands and funds." (Emphasis supplied)

Although the Supreme Court recognized that the Arizona Highway Department has the power of eminent domain and could condemn lands after a public sale, where it was not the successful bidder, the decision of the Court did not turn on this fact but rather on the protection which would be afforded the trust in public transfers under the procedure adopted by the State Land Commissioner.

It is, therefore, the opinion of this office that the State Land Commissioner may establish rules and procedures to transfer trust lands to any governmental agencies of the State or political subdivisions or municipal corporations thereof without the necessity of public auction sales, when such rules or procedures are reasonably calculated to assure the integrity of the trust and to prevent misapplication of its lands. Consistent with the Supreme Court's decisions, such rules and procedures should require a true appraisal and full compensation for any land or interest in land conveyed to these entities. We see no requirement that such conveyances shall be restricted only to agencies or political subdivisions and municipal corporations having the power of eminent domain.

Respectfully submitted,

*Darrell F. Smith*

DARRELL F. SMITH  
The Attorney General